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UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

JOSEPH F. FRANKL, Regional Director of
Region 20 of the National Labor Relations
Board, for and on behalf of the NATIONAL
LABOR RELATIONS BOARD,

Petitioner,

vs.

BAUER'S INTELLIGENT
TRANSPORTATION, INC.,

Respondent.

Civil No.

PETITION FOR INJUNCTION UNDER
SECTION 10(j) OF THE NATIONAL LABOR
RELATIONS ACT, AS AMENDED [29 U.S.C.
SECTION 160(j)]

To the Honorable Judges of the United States District Court, Northern District of
California:

Comes now Petitioner Joseph F. Frankl, Regional Director of Region 20 of the
National Labor Relations Board (the Board), and petitions this Court, for and on behalf of
the Board, pursuant to Section 10(j) of the National Labor Relations Act, as amended [61
Stat. 149; 73 Stat. 544; 29 U.S.C. § 160 (j)] (the Act), for appropriate injunctive relief

1 pending the final disposition of the matters herein involved now pending before the
2 Board on an Amended Consolidated Complaint and Notice of Hearing of the General
3 Counsel of the Board charging Bauer's Intelligent Transportation, Inc. (Respondent), is
4 engaging in unfair labor practices in violation of Section 8(a)(1) and (2) of the Act [29
5 U.S.C. § 158(a)(1) and (2)]. In support thereof, Petitioner respectfully shows as follows:

6 **DISTRICT COURT JURISDICTION**

7
8 Jurisdiction of the Court is invoked pursuant to Section 10(j) of the Act, which
9 provides, *inter alia*, that the Board shall have power, upon issuance of a complaint
10 charging that any person has engaged in unfair labor practices, to petition any United
11 States district court within any district wherein the unfair labor practices in question are
12 alleged to have occurred or wherein such person resides or transacts business, for
13 appropriate temporary injunctive relief or restraining order pending final disposition of
14 the matter by the Board. 29 U.S.C. § 160 (j)
15

16 **BOARD'S PROCEDURAL HISTORY**

17 1. Petitioner is the Regional Director of Region 20 of the Board, an agency
18 of the United States Government, and files this petition for and on behalf of the Board,
19 which has authorized the filing of this petition.
20

21 2. (a) On March 12, 2015, the Local 665, International Brotherhood of
22 Teamsters (the Union), filed a charge in Board Case 20-CA-148119 alleging that
23 Respondent is engaged in unfair labor practices in violation of Section 8(a)(1) of the Act.

24 (b) On April 30, 2015, the Union filed a charge in Board Case 20-CA-
25 151225 alleging that Respondent is engaged in unfair labor practices in violation of
26 Section 8(a)(1) and (2) of the Act.
27
28

1 3. The aforesaid charges were referred to Petitioner as Regional Director of
2 Region 20 of the Board.

3 4. Upon investigation, Petitioner determined that there is reasonable cause to
4 believe that the Section 8(a)(1) and (2) allegations in the aforesaid charges are true.

5 5. On August 18, 2015, Petitioner, as Regional Director of Region 20 of the
6 Board upon the charges in Board Cases 20-CA-148119 and 20-CA-151225, and pursuant
7 to Section 10(b) of the Act [29 U.S.C. § 160(b)], issued an Amended Consolidated
8 Complaint and Notice of Hearing (Complaint) against Respondent alleging, *inter alia*,
9 that Respondent is engaging in unfair labor practices in violation of Section 8(a)(1) and
10 that Respondent is engaging in unfair labor practices in violation of Section 8(a)(1) and
11 (2) of the Act.¹

12 6. On September 14, 2015, and consecutive dates as necessary, a hearing on
13 the allegations of the Complaint will commence before an Administrative Law Judge.

14 7. Pursuant to Rule 10(c) of the Federal Rules of Civil Procedure, true copies
15 of the aforesaid Complaint (Exhibit A) and the original charges in Board Case 20-CA-
16 151225 (Exh. B1 and B2)², are attached hereto and are incorporated herein as though
17 fully set forth.
18

19 **STRONG LIKELIHOOD OF SUCCESS ON THE MERITS**

20 9. There is a strong likelihood that, in the underlying administrative
21 proceeding in Board Cases 20-CA-148119 and 20-CA-151225, Petitioner will establish
22 that the allegations set forth in the Complaint are true and that Respondent engaged in,
23 that the allegations set forth in the Complaint are true and that Respondent engaged in,
24

25 _____
26 ¹ The Complaint alleges additional violations of Section 8(a)(1) of the Act for which this
27 Petition does not seek relief.

28 ² All references to exhibits are labeled “Exh.” followed by the paragraph number.

1 and is engaging in, unfair labor practices in violation of Section 8(a)(1) and (2) of the
2 Act. More specifically, and as more particularly described in the Complaint attached
3 hereto, Petitioner alleges that there is a strong likelihood that Petitioner will establish the
4 following allegations which are the subject of this petition:

5 (a) Respondent has been a California corporation with offices
6 and places of business in San Francisco, Santa Clara and Los Angeles, California and has
7 been engaged in the business of providing transportation services. (Exh. A at paragraph
8 2(a))

10 (b) The Union has been a labor organization within the
11 meaning of Section 2(5) of the Act. (Exh. A at paragraph 4)

12 (c) The Professional Commuter Drivers Union (PCDU) has
13 been a labor organization within the meaning of Section 2(5) of the Act. (Exh. A at
14 paragraph 5)

16 (d) At all material times, the following individuals held the
17 following positions and have been supervisors of Respondent within the meaning of
18 Section 2(11) of the Act and/or agents of Respondent within the meaning of Section
19 2(13) of the Act:

- 21 (i) Gary Bauer, Chief Executive Officer
22 (ii) Clarence Murdock, Road Supervisor
23 (iii) William Amos, Executive Director of Human
24 Resources & Safety
25 (iv) Todd Benson, Chief Operating Officer (Exh. A at
26 paragraph 6)
27

SURVEILLANCE OF UNION ACTIVITIES

(e) On or about March 12, 2015, Respondent by William Amos, Todd Benson, and Clarence Murdock, at the corner of Terry Francois Boulevard and Third Street in San Francisco, engaged in surveillance of employees' union activities. (Exh. A at paragraph 7(b))

DOMINATION OF A LABOR ORGANIZATION

(f) From about March 6 to about March 12, 2015, Respondent, by Clarence Murdock, at Respondent's San Francisco and Santa Clara facilities and at bus/shuttle stops along the drivers' routes:

(i) Suggested to employees that they form a union to deal with Respondent concerning wages, hours, and other terms and conditions of employment;

(ii) Rendered assistance and support to the Professional Commuter Drivers Union (PCDU) by soliciting employees on work time regarding a union affiliated with Murdock, including requesting employees' signatures. (Exh. A, at paragraph 9(a))

(g) Since about March 6, 2015, Respondent, by Clarence Murdock:

(i) Served as Chief Union Representative of the PCDU;

(ii) Established policies and procedures, and participated in the affairs of the PCDU. (Exh. A at paragraph 9(b))

1 (h) On about March 13, 2015, Respondent at its San Francisco
2 facility:

3 (i) Permitted the PCDU to hold a meeting in the
4 employee breakroom;

5 (ii) Conducted a meeting of the PCDU. (Exh. A at
6 paragraph 9(c))
7

8 (i) Since about March 12, 2015, Respondent, by Gary Bauer,
9 recognized and bargained with PCDU as the exclusive collective-bargaining
10 representative of certain of its employees. (Exh. A at paragraph 9(d))

11 **UNLAWFUL ASSISTANCE AND SUPPORT OF PCDU**

12 (j) Since about March 6, 2015, Respondent has provided
13 assistance and support to the PCDU by:
14

15 (i) Permitting Clarence Murdock to solicit employees
16 who were on work time;

17 (ii) Permitting Clarence Murdock to solicit employees
18 while on company property;
19

20 (iii) Permitting Clarence Murdock to conduct PCDU-
21 related matters, including soliciting employees and negotiating a collective-bargaining
22 agreement, while on work time;

23 (iv) Allowing Clarence Murdock access to company
24 property and employees on work time for PCDU business, including meetings; and

25 (v) Permitting Clarence Murdock to use company
26 vehicles for PCDU business. (Exh. A at paragraph 10)
27
28

UNLAWFUL RECOGNITION OF A MINORITY UNION

(k) Since about March 12, 2015, Respondent, by Gary Bauer, has recognized and bargained with the PCDU as the exclusive collective-bargaining representative of the following employees of Respondent (the Unit):

All commuter drivers employed by Respondent in San Francisco and Santa Clara, California (the "San Francisco Bay Area"), exclusive of supervisory personnel. At all material times, the Union has been a labor organization within the meaning of Section 2(5) of the Act [29 U.S.C. § 152(5)]. (Exh. A at paragraph 11(a))

(l) On about March 23, 2015, Respondent, by Gary Bauer, entered into and since then has maintained and enforced a collective-bargaining agreement with the PCDU. (Exh. A at paragraph 11(b))

(m) Respondent recognized and bargained with PCDU as the exclusive collective-bargaining representative of the Unit and entered into and has since then maintained and enforced a collective-bargaining agreement with PCDU even though the PCDU did not represent an uncoerced majority of the Unit. (Exh. A at paragraph 11)

ALLEGED VIOLATIONS OF THE ACT

(n) By the conduct described above in paragraph 9(e), Respondent has been interfering with, restraining, and coercing employees in exercise of the rights guaranteed in Section 7 of the Act in violation of Section 8(a)(1) of the Act. (Exh. A at paragraph 12)

(o) By the conduct described above in paragraphs 9(f) through 9(l), Respondent has dominated and interfered with the formation and administration of,

1 and has been rendering unlawful assistance and support to, a labor organization in
2 violation of Section 8(a)(1) and (2) of the Act. (Exh. A at paragraph 13)

3 (p) By the conduct described above in paragraphs 9(j) through
4 9(m), Respondent has been rendering unlawful assistance and support to, a labor
5 organization in violation of Section 8(a)(1) and (2) of the Act. (Exh. A at paragraph 14)

6 (q) The unfair labor practices of Respondent described above
7 affect commerce within the meaning of Section 2(6) and (7) of the Act. (Exh. A at
8 paragraph 15)

9
10 **INJUNCTIVE RELIEF IS JUST AND PROPER**

11 10. It may fairly be anticipated that, unless enjoined, Respondent will continue
12 to repeat the act and conduct set forth in subparagraphs 9(e) through 9(m), or similar or
13 like acts in violation of Section 8(a)(1) and (2) of the Act.

14
15 11. Upon information and belief, it is submitted that unless the aforesaid
16 flagrant unfair labor practices are immediately enjoined and appropriate injunctive relief
17 granted, Respondent's violations of the Act will continue, with the result that
18 enforcement of important provisions of the Act and of the public policy will be frustrated
19 before Respondent can be placed under legal restraint through the administrative
20 procedures set forth in the Act consisting of a Board Order and an Enforcement Decree of
21 the United States Court of Appeal. It is likely that substantial and irreparable harm will
22 result to Respondent's employees and their statutorily protected right to organize and
23 designate a labor organization of their choice unless the aforesaid unfair labor practices
24 are immediately enjoined and appropriate relief granted. Unless injunctive relief is
25 immediately obtained, the effectiveness of the Board's final order will likely be nullified,
26
27
28

1 the administrative procedure rendered meaningless, and Respondent will continue in its
2 above-described unlawful conduct during the pendency of the proceedings before the
3 Board, with the result that, during this period, the rights of Respondent's employees
4 guaranteed and protected by Section 7 of the Act [29 U.S.C. § 157] to exercise their right
5 to choose their own bargaining representative, or none at all, will be frustrated and
6 denied.

7
8 12. Upon information and belief, it is submitted that, in balancing the equities
9 in this matter, if injunctive relief is not granted, the harm that will be suffered by the
10 Union, the employees, and the public interest, and the purposes and policies of the Act
11 greatly outweighs any harm that Respondent may suffer if such injunctive relief is
12 granted.

13
14 13. Upon information and belief, to avoid the serious consequences referred to
15 above, it is essential, just and proper, and appropriate for the purposes of effectuating the
16 remedial purposes of the Act and avoiding substantial and irreparable injury to such
17 policies, the public interest, the employees, and the Union, and in accordance with the
18 purposes of Section 10(j) of the Act that, pending final disposition by the Board,
19 Respondent be enjoined and restrained as herein prayed.
20

21 WHEREFORE, Petitioner respectfully requests the following:

22 (1) That the Court issue an order directing Respondent to file an
23 Answer to each of the allegations set forth and referenced in this Petition, and to appear
24 before the Court, at a time and place fixed by the Court, and show cause, if any there be,
25 why, pending final disposition of the matters herein involved, now pending before the
26 Board, Respondent, its officers, representatives, supervisors, agents, servants, employees,
27

1 attorneys and all persons acting on its behalf or in participation with it, should not be
2 enjoined and restrained from the acts and conduct described above, similar or like acts, or
3 other conduct in violation of Section 8(a)(1) and (2) of the Act, or repetitions thereof, and
4 that the instant Petition be disposed of on the basis of the Board affidavits and without
5 oral testimony, absent further order of the Court.

6 (2) That the Court issue an order directing Respondent, its officers,
7 representatives, supervisors, agents, servants, employees, attorneys and all persons acting
8 on its behalf or in participation with it, to *cease and desist* from the following acts and
9 conduct, pending the final disposition of the matters involved now pending before the
10 Board:
11

12 (a) giving effect to or enforce the collective-bargaining
13 agreement that it entered with Professional Commuter Drivers Union (PCDU) on or
14 about March 23, 2015, provided, however, that nothing in this Order shall require
15 Respondent to vary or abandon any existing wages or benefits established for employees
16 by its current agreement with the PCDU;
17

18 (b) surveilling employees' union activities; and
19

20 (c) interfering with, restraining, or coercing employees in the
21 exercise of their Section 7 rights in any like or related manner.

22 (3) That the Court further order Respondent, its officers,
23 representatives, supervisors, agents, servants, employees, attorneys and all persons acting
24 on its behalf or in participation with it, to take the following steps pending the final
25 disposition of the matters herein involved now pending before the Board within five days
26 of issuance of this Court's order:
27

1 (a) withdraw and withhold recognition from PCDU;

2 (b) post the district court's order at its facilities where notices
3 to its employees are customarily posted;

4 (c) At a time(s) that maximize(s) employee attendance, Gary
5 Bauer, Owner/CEO, (Bauer) in the presence of a Board Agent and Union
6 representatives, or a Board Agent in the presence of Bauer and Union representatives,
7 read a copy of this Court's order to all Commuter Drivers;
8

9 (d) mail a copy of the district court order to all Commuter
10 Drivers employed since March 6, 2015; and

11 (e) file and serve upon the Regional Director of Region 20 of
12 the Board, a sworn affidavit from a responsible official describing with specificity the
13 manner in which Respondent has complied with the terms of the Court's decree,
14 including the locations of the posted Court order.
15

16 (4) That upon return of said Order to Show Cause, the Court issue an
17 order enjoining and restraining Respondent as prayed and in the manner set forth in
18 Petitioner's proposed temporary injunction lodged herewith.

19 (5) That the Court grant such other and further temporary relief that
20 may be deemed just and proper.
21

22 //

23 Pursuant to Local Rule 7-6 of the Local Rules of the Court, Petitioner does not
24 desire oral testimony at the hearing and estimates that the amount of time required for the
25 hearing will be one hour.
26

27 DATED AT San Francisco, California, this 21st day of August, 2015.

/s/ Carmen León

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